



July 25, 2001

Mr. Juan J. Cruz  
Escamilla & Poneck, Inc.  
5219 McPherson, Suite 306  
Laredo, Texas 78041

OR2001-3227

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149879.

The Mathis Independent School District (the "school district"), which you represent, received a request for "any and all documentation pertaining to the allegations made about [the requestor]." You claim that the requested information is excepted from disclosure under section 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act and section 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you contend that a portion of the responsive information, marked as Exhibit B, is part of an ongoing investigation being conducted by the school district, and therefore, not a "completed investigation" for purposes of section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is made expressly public except as otherwise provided by section 552.108 of the Government Code or if confidential under other law. However, section 552.022 does not serve as an exhaustive list of public information or as an exception to the release of information. Rather, it lists eighteen categories of public information that generally may be withheld only if confidential by law, or, in the case of completed reports, investigations, evaluations, and audits, is excepted under section 552.108 of the Government Code. *See Gov't Code § 552.022* (section 552.022(a) expressly states that it does not limit "the amount or kind of information that is public information under this chapter"). You do not argue section 552.108 as an exception to

disclosure. Therefore, with the exception of the following, you may not withhold Exhibit B from public disclosure under section 552.022 of the Government Code.

Exhibits B and C contain information concerning "educational records." Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Section 552.101 encompasses confidentiality provisions such as the Family Educational Rights and Privacy Act of 1974. The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). For purposes of FERPA, students' handwritten letters constitute "education records" in that they contain information about

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identifiable students. *See* Open Records Decision No. 224 (1979) (student's handwritten comments that would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). Accordingly, we have marked Exhibits B and C to indicate the types of information that may reveal or tend to reveal information about a student that must be withheld by the school district pursuant to FERPA. You must release the remainder of Exhibits B and C to the requestor.

Last, we address your assertion that Exhibit D is excepted from disclosure under section 552.131 of the Government Code. Section 552.131 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131. Because the legislature limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). Here, because you have not identified the specific civil, criminal, or regulatory law that has allegedly been violated, the school district may not withhold Exhibit D under section 552.131. You must release this information to the requestor.

In summary, the school district must withhold portions of Exhibits B and C pursuant to FERPA. Exhibit D, in its entirety, must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

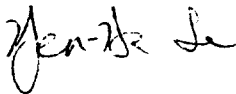
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Yen-Ha Le'.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DBF/seg

Ref: ID# 149879

Enc. Marked documents

cc: Mr. Richard Miller  
P.O. Box 87  
Sandia, Texas 78383  
(w/o enclosures)